

This letter references the Department's administrative rules on computer software and maintenance agreements. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

November 29, 2004

Dear Xxxxx:

This letter is in response to your letter dated December 10, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC provides a complete solution for financial transactions that require the determination, calculation, and reporting of U.S. sales and use tax. The ABC system automatically determines sales and use tax for all state, county, city, transit or special district taxes associated with a given address. ABC also provides product taxability. ABC determines whether particular products are taxable or exempt, and customers map their products to our product listing.

We are seeking guidance on the taxability of computer hardware, software and related services. Our specific product taxability questions are detailed below. It would be helpful to us if you indicate any statutes or authorities you use.

Question: Are the following subject to sales or use tax in your state?

Canned computer software

1. The sale of canned computer software
 - a. delivered via tangible medium such as disk or tape
 - b. delivered via load and lead (going to the customer's place of business, loading it ourselves sometimes using tangible media, then taking all tangible media with us and leaving)
 - c. delivered electronically (FTP)

2. The lease of canned computer software
3. Charges to customize canned software
4. Mandatory maintenance agreements as a condition of the sale of canned computer software
5. Mandatory maintenance agreements for canned computer software which include upgrades or manuals
6. Mandatory maintenance agreements which include consulting, support services and training services
7. Optional maintenance contracts for canned computer software that includes upgrades and manuals
8. Optional maintenance contracts for canned computer software which include consulting, support services and training services

Custom computer software

1. The sale or lease of custom computer software
 - a. delivered via tangible medium such as disk or tape
 - b. delivered via load and lead (going to the customer's place of business, loading it ourselves sometimes using tangible media, then taking all tangible media with us and leaving)
 - c. delivered electronically (FTP)
2. Optional custom computer software maintenance agreements which do not include an upgrade
3. Optional custom computer software maintenance agreements which include upgrades and manuals
4. Optional custom computer software maintenance agreements which include consulting, support services and training services

Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

You have inquired concerning the taxability of computer software. The Department's administrative rule regarding computer software can be found at 86 Ill. Adm. Code 130.1935. In connection with your computer software inquiry, you have asked about maintenance agreements. For answers concerning maintenance agreements please see 86 Ill. Adm. Code 140.301(b)(3).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).]

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk